



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 1328-00

25 February 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: 1STLT [REDACTED] USMCR, [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 15 Nov 99 w/attachments  
(2) HQMC PERB memo dtd 22 Feb 00 w/encl  
(3) HQMC MMOA-4 memo dtd 17 Feb 00  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 14 June to 12 September 1996, a copy of which is at Tab A to enclosure (1). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness report. Petitioner further requested removal of his failure of selection before the Fiscal Year 2000 Captain Selection Board, so as to be considered by the selection board scheduled to convene on 29 February 2000 to consider officers of his category for promotion to the grade of captain as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Ensley, Exnicios, and Zsalman, reviewed Petitioner's allegations of error and injustice on 25 February 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

## CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

## RECOMMENDATION:


a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to captain as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

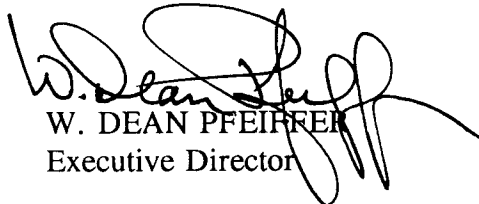
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610  
MMER  
22 Feb 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT [REDACTED]  
[REDACTED], USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 17 Feb 00  
(2) CMC Advisory Opinion 1610 MMOA-4 of 17 Feb 00  
(3) Copy of CMC ltr 1610 MMER of 18 Feb 00

1. As evidenced by enclosure (1), PERB removed from First Lieutenant [REDACTED] official military record, the fitness report for the period 960614 to 960912 (CH).

2. We defer to BCNR on the issue of Lieutenant [REDACTED] request for the removal of his failures of selection to the grade of Captain. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided Lieutenant [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]  
Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

13248-00

IN REPLY REFER TO:  
1610  
MMER/PERB  
17 FEB 2000

From: Commandant of the Marine Corps  
To: First Lieutenant [REDACTED] USMC  
[REDACTED] Compa  
[REDACTED]  
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
27 Sep 96	Cap [REDACTED]	960614 to 960912 (CH)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the report or the events which may have precipitated it, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]  
By direction



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

1328-00

IN REPLY REFER TO:

1600  
MMAA-4  
17 Feb 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of First  
Lieutenant [REDACTED] USMC  
of 17 Feb 00

1. Recommend approval of First Lieutenant [REDACTED] implied request  
for removal of his failure of selection.

2. Per the reference, we reviewed First Lieutenant [REDACTED] record  
and petition. He failed selection on the FY00 USMC Captain  
Selection Board. Subsequently, he successfully petitioned the  
Performance Evaluation Review Board (PERB) for removal of the  
Change of Reporting Senior fitness report of 960614 to 960912.  
First Lieutenant [REDACTED] petition implies a request for removal of  
his failure of selection.

3. In our opinion, the petitioned fitness report does present  
jeopardy to the record and its removal enhances the competitiveness  
of the record. While we recognize the record contains other areas  
of competitive concern, we believe First Lieutenant [REDACTED] should  
be afforded the benefit of the doubt and have his failure of  
selection removed.

4. Point of contact is Major [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Lieutenant Colonel, U.S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division

1610  
MMER  
18 Feb 00

From: Commandant of the Marine Corps  
To: First [REDACTED] 0005 USMC  
[REDACTED]  
[REDACTED]  
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) CMC ltr 1610 MMER/PERB of 17 Feb 00; same subject

Encl: (1) Copy of CMC Advisory Opinion 1610 MMOA-4 of 17 Feb 00

1. In the referenced letter, you were advised that your Application for Correction of Naval Record would be forwarded to the Board for Correction of Naval Records (BCNR) for a decision regarding your request for the removal of your failure of selection.

2. For your information, the enclosure is a copy of the Advisory Opinion provided to BCNR for their utilization in resolving the failure of selection issue. Inquiries concerning this matter should be directed to the BCNR Case Examiner [REDACTED] at DSN [REDACTED].

[REDACTED]  
By direction

Copy to:  
BCNR [REDACTED]